



# ORIGINAL

DEPT. OF TRANSPORTATION  
DOCKETS

PATRIOT HOLDINGS, LLC . AMERICAN SHIP MANAGEMENT, LLC . PATRIOT CONTRACT SERVICES, LLC

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May 6, 1999

Docket Management Facility  
(USCG- 1999-5543)  
U. S. Department of Transportation  
Room PL-401  
400 Seventh Street, S. W.  
Washington, DC 20593-0001

Dear Docket Manager,

**Subject:       Comments on Study of the Implementation and Enforcement of Safety Management System (SMS) Regulations, Complying with the International Safety Management (ISM) Code**

I am Captain Saunders A. Jones, Executive Vice President and Chief Operating Officer for American Ship Management, LLC, a wholly owned subsidiary of Patriot Holdings, LLC. I wish to make the following comments regarding Study of the Implementation and Enforcement of Safety Management System (SMS) Regulations, Complying with the International Safety Management (ISM) Code.

The ISM Code represents a bold new approach to encouraging continuous improvement in safety and environmental compliance management in international shipping. Nevertheless, the real threat of ISM code documents being used against both shipowners and individuals could undermine the effectiveness of the protocol. And, while shipowners who enthusiastically embrace the principles outlined in the ISM code will no doubt benefit from reduced accident costs, the fact of the matter is that absent some protection, the ISM Code may in fact expand the potential for liability.

For example, the ISM Code requires that companies establish vessel and equipment maintenance procedures, inspections, and require the reporting of deficiencies and corrective actions taken. Similarly, the Code also establishes and provides for the documentation of extensive training requirements for a vessel's master and crew. Shipowners must also maintain copies of safety management audits and are also required to internally report accidents, hazardous conditions, or non-conformities and to establish procedures for implementing corrective action. This information is a veritable treasure trove to any party asserting a claim against a vessel owner and could be used by either a private litigant or an investigative authority during the course of a judicial or administrative proceeding.

More specifically, the legislation implementing the ISM Code in the United States did not afford any protections against discovery or evidentiary privileges with respect to documents or records such that a shipowner will likely be fearful that documents and records that they have been encouraged to produce in order to enhance vessel safety will be used against them or their employees in a judicial or investigative proceeding. This would seem to cut against exactly what the ISM Code was designed to promote in the first place i.e. critical self-examination designed to enhance shipboard safety.

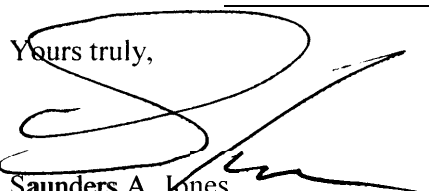
Nevertheless, the United States Coast Guard, as well as some other federal agencies, seem to have recognized that a program designed to promote candid self-examination can only succeed in an environment where at least some protection is afforded.

For example, the Federal Aviation Administration, ("FAA") regulations implementing the Aviation Safety Reporting Program provide a privilege for voluntary reports by airline pilots, air traffic controllers and other aviation system participants. At the same time, United States Coast Guard regulations themselves provide that admissions made by mariners during the course of a marine casualty investigation are inadmissible against the mariner who made them in a license suspension or revocation action. Coast Guard regulations also provide protection for other confidential information as well. Finally, the Coast Guard and the U.S. Maritime Administration are developing a National Maritime Incident Reporting System which would permit the confidential reporting of "near-accidents." ISM Code treatment should be no different.

Quite simply, if a safety management system is to achieve its goal of continuous improvement of vessel safety, a company must be assured of candid and reliable reporting by both its vessel crew and shoreside personnel. The Coast Guard should therefore take all available steps to assure all mariners that no action will be taken against their professional licenses for information voluntarily provided in compliance with the ISM Code. Just as importantly, a company's post-accident analysis should be accorded a qualified privilege against discovery or admission of those analyses into evidence in private litigation against a shipowner or manager. This would promote the frank reporting that the ISM Code was designed to encourage and further the goal of increasing vessel safety. At the same time, any protection or privilege should not harm potential private party litigants since any protection or privilege would not affect the discovery or admission into evidence of either records or reports legally required before the enactment of the ISM Code or the underlying information or data itself from disclosure.

If you have any questions, feel free to contact me at (925) 296-2020-telephone, (925) 296-2320-fax or via the internet at [sandy.jones@asmhq.com](mailto:sandy.jones@asmhq.com).

Yours truly,



Saunders A. Jones  
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